

UNITED STATES DISTRICT COURT

ASSATA ACEY,

Plaintiff

v.

INDUCTEV,

Defendant.

CIVIL ACTION

No. 2:23-01438-PD

Motion to Demm Fa

I, Plaintiff present this motion that the court deem all facts from Doc 92 to be undisputed under Fed. R. Civ. P. 56(e) --due to the Defendant's failure to respond to each of my proposed facts, and the court's order Doc 129 (p.6, Section C, "Rule 56 Motions").

1. From the first line of the introduction to the last line before the conclusion, the Defendant's response in Doc 145 begins and ends with argument and commentary on my motion for partial summary judgement:

“Plaintiff cites two reasons the court should grant summary judgement...Indeed, everything plaintiff relies on suggests...”. (Doc 145, p.1 and 9).

2. In the Defendant's motion, there is no itemized or otherwise specific reference to communicate specific admission or denial of each labelled fact asserted in Doc 92.

3. There are also no attachments filed with the Defendant's motion, nor has plaintiff

received any notice, filed or otherwise, that the Defendant's filing was intended to include an attachment.

4. As stated in FRCP 56 (e):

"If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order."

5. As stated in the court's standing order (and judicial practice and procedures):

"The non-moving party shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party. Statements of material facts in support of or in opposition to a motion shall include specific supporting record cites. All material facts set forth in the statement required to be served by the moving party may be deemed admitted unless controverted by the opposing party."(Doc 129 p. 6).

6. As of yet, the Defendant has failed to request any extension of the court's response deadline (09/13/2024); this deadline has been provided in two scheduling orders (Doc 90, p.1). (Doc 129, p.1-2, paragraph 3).

7. Further still, the court has set in its procedures (and reminded both parties of in

Doc 129) a high threshold for late filings:

“Requests for continuances and extensions will generally not be granted. A motion to continue or extend the date of any matter or deadline must be supported by a detailed declaration demonstrating good cause for the continuance. The motion must also indicate whether there have been previous requests for continuances or extensions and whether I have granted or denied those requests. Counsel shall include proposed orders when requesting continuances or extensions. Counsel must submit any request for a continuance or extension no later than five (5) business days before the scheduled date. Requests submitted after that time shall be denied absent a showing of compelling circumstances (e.g., serious bodily injury or illness). All requests must be filed via ECF. Any late filing may be docketed only with leave of Court and upon a showing of good cause. Counsel shall file a motion for leave to file out of time, supported by a declaration demonstrating good cause, and shall attach the late filing as an exhibit”.

Conclusion

Because the court has wide discretion over how to address noncompliance with its own orders (and FRCP 56), I leave the determination (of whether the defendant’s failure is sanctionable) to the court. However, I do ask that the facts in Doc 92 be deemed uncontested.

Sincerely,

Assata Acey Hackman /s/

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Date: 09/16/2024